

REMARKS/ARGUMENTS

Reconsideration of this application is requested. Claims 1-3, 5-11, 21 and 22 are in the case.

I. DECLARATION

A corrected executed substitute declaration will be submitted when received by the undersigned.

II. SPECIFICATION

The specification has been corrected to remove the erroneous paragraph.

III CLAIM OBJECTIONS

The claim objections noted in the Action have received attention in the present response. In particular, claim 1 and claim 21 have been amended to correct punctuation and the "binding site" error. The dependent claims have been amended to replace "A" with "The". Withdrawal of the claim objections is now respectfully requested.

IV. THE 35 U.S.C. §112, FIRST AND SECOND PARAGRAPH , REJECTIONS

In response to the formal rejection of claim 4, the subject matter of claim 4 has been incorporated into claim 1 and claim 4 has been deleted without prejudice. Withdrawal of this aspect of the formal rejection is respectfully requested.

In response to the remaining 35 U.S.C. §112, first and second paragraph, rejections, and without conceding to the merit of those rejections, the claims have been amended to essentially incorporate the changes suggested by the Examiner. Withdrawal of the outstanding formal rejections is now respectfully requested.

V. THE ANTICIPATION REJECTION

Claims 1, 3, 4, 7, 9-11, 21 and 22 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by WO 00/56909 to Iggo et al for the reasons of record. This rejection is respectfully traversed.

The claimed invention is in no way suggested by WO 00/56909. E1A is not mechanistically directly involved in viral construct nucleic acid replication. The E1A gene is regulatory, not mechanistic. Furthermore, amended claim 1 relates to an advantageous virus not at all anticipated by Iggo et al. The outstanding anticipation rejection should now be withdrawn. Such action is respectfully requested.

VI. THE OBVIOUSNESS REJECTION

Claims 1, 3, 4, 7, 9-11, 21 and 22 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent 6,197,293 to Henderson in view of Iggo et al. This rejection is respectfully traversed.

The claims are not rendered unpatentable by Henderson and/or Iggo. Neither of these references discloses or suggests E1B control with wild type E2 and E3 and relocation of packaging signal. Absent any such suggestion, it is clear that they do not

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give rise to a *prima facie* case of obviousness. Withdrawal of the obviousness rejection is respectfully requested.

VII. DOUBLE PATENTING

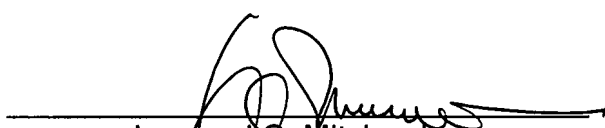
Claims 1-11, 21 and 22 stand provisionally rejected on obviousness-type double patenting grounds as allegedly unpatentable over claims 1-4, 7, 9, 11-16, 19, 20 and 25-38 of co-pending application Serial No. 10/433,681. The Examiner's comments have been noted regarding provisional obviousness-type double patenting rejections. It is requested that this provisional obviousness-type double patenting rejection be placed in abeyance until the present case is otherwise in allowable condition.

Favorable action is awaited.

Respectfully submitted,

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